IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.658 OF 2004

Siddappa Rangappa Telgu & another ...Appellants

Vs.

State of Maharashtra ...Respondents

Mr.R.D.Dhanuka for the Appellants
Mr.K.K.Tated,A.G.P.

CORAM: ABHAY S. OKA, J.

DATE OF LAST HEARING:SEPTEMBER 1, 2004.

DATE OF PRONOUNCEMENT OF JUDGMENT:14-9-2004

JUDGMENT :

1. The Appellants have taken an exception to the Judgment and Award dated 15th December 2000 passed by the learned Additional Member, Motor Accident Claims Tribunal, Pune by which on the Application made by the Respondent, the Appellants have been directed to pay compensation of Rs.30,000/- to the Respondent with interest at the rate of 12% p.a. from the date of making the Claim Application till the payment.

2. Considering the fact that the Appeal arises out of a claim for compensation under Motor Vehicles Act,1988 and considering the fact that the Respondent-State Government was represented by the learned A.G.P., by order dated 23rd June

2004, I directed the Appellant to file compilation of pleadings and depositions as well as copies of other documents on record of the tribunal. I granted time till 8th July 2004 by making it clear that on that day, the Appeal may be finally decided at the stage of admission. Thereafter the matter was kept on 2nd August 2004. On that day the Appeal was fully heard and the Counsel appearing for the parties extensively referred to the pleadings and notes of evidence. The learned A.G.P. sought time on that day to produce a map showing the site of the accident which was on record of Tribunal. On that day time was granted up to 16th August 2004 to the learned A.G.P. to produce the map.

3. On 16th August 2004 the learned A.G.P. pointed out that the Officer concerned of the Respondent-State Government has not made available a copy of the map on the record of the Tribunal. He therefore requested that the Record and Proceedings of the case before the Tribunal may be called for. By order dated 16th August 2004, I declined to call for the Record and Proceedings in view of amendment to the Code of Civil Procedure, 1908 which was brought into force with effect from July 2002. While rejecting the request of the learned A.G.P. to call for the Record and Proceedings, I again granted time by two weeks to the learned A.G.P. to produce a copy of the map.

4. On 1st September 2004, when the matter was called out,

the learned A.G.P. fairly stated that the map showing the site of the accident was not placed on record of the tribunal. He, however, produced a sketch prepared by an Officer of the Respondent-State Government showing the location of the vehicles when the accident took place. On 1st September 2004, I again heard the learned Counsel appearing for the parties in detail and the Judgment was reserved.

5. With a view to appreciate the submissions made by the Counsel for the parties it is necessary to refer to the facts of the case. One Shri P.T.Hardikar, Joint Director of Town Planning of the Government of Maharashtra was proceeding in an Ambassador car bearing No.MZA-2521 which was owned by the Respondent. He was travelling from Pune to Mumbai. One Govind Pawar was driving the said car. The said Hardikar was occupying the rear seat on the right hand side and one Shri Mulgaonkar was occupying the rear seat on the left hand side. According to the Respondent the driver of the car was driving the vehicle in a very moderate speed by observing the rules and regulations of the traffic. A truck bearing No..MHS-2855 which was driven by the Appellant No.1 was proceeding from Pune towards Bombay. According to the Respondent, the Appellant No.1 was driving the said truck in very rash and negligent manner and also in a very high speed. The case of the Respondent is that when the Appellant No.1 was attempting to overtake one bullock cart which was proceeding in the

direction of Mumbai as the truck was in a very high speed, the Appellant No.1 could not control the said truck. As a result of which the truck gave dash against front side of the said ambassador car. It is the case of the Respondent that when the driver of the car noticed the truck overtaking the bullock cart, with a view to avoid head-on collision the driver of ambassador car tried to take a turn towards right side and therefore the impact of the dash was on the left side of the car.

6. The case of the Respondent is that the ambassador car was totally damaged and the Deputy Engineer, Regional Workshop, Sub-Division No.III, Dapodi, Pune, assessed the damage to the car to the extent of Rs.62,000/-. It is alleged that a certificate was issued by the said office stating that even after repairs the ambassador car will not give satisfactory service. According to the Respondent at the time of accident the price of the car was Rs.87,060/-. The Respondent further pleaded that as a result of extensive damage to the car, the Respondent will be required to pay the amount of Rs.14,000/- by way of salary to the driver for about 10 months without getting any benefit from his employment. The Respondent claimed a sum of Rs.1,07,000/- by way of compensation.

7. The Appellants filed written statement and contested the claim. The Appellants denied that the Appellant No.1 was trying to overtake the a bullock cart ahead of his truck.

The case of the Appellants is that the it was the driver of the car who was attempting to overtake the bullock cart. According to the Appellants the driver of the Respondent was driving the car in excessive speed and therefore could not control the car and dashed against the truck. It is contended that the accident occurred only due to negligence on the part of driver of the Ambassador car. After considering the evidence, by the impugned Judgment and Award, the Tribunal awarded the compensation of Rs.30,000/- with interest thereon at the rate of 12% p.a.

8. The learned Counsel for the Appellants submitted that the evidence on record clearly shows that the accident occurred only due to negligence on the part of the driver of the Ambassador car. He submitted that it was the Ambassador was which was trying to overtake the bullock cart in a very high speed. He submitted that the very fact that at the time of point of impact the car was completely on its wrong side shows that it was the negligence of the driver of the Respondent which caused the accident. He referred to the oral evidence on record and submitted that there was no negligence on the part of the Appellant No.1. He submitted that considering the evidence on record there was no question of awarding sum of Rs.30,000/- as compensation without recording any specific reason. He submitted that the compensation amount was exorbitant. He also criticised the interest awarded at the rate of 12% p.a. stating that the

rate of interest could not have exceeded 9% p.a.

9. Shri Tated learned A.G.P. relied upon the sketch produced by him in Appeal. He also relied upon the deposition of the driver of Ambassador car which according to him clearly establishes the negligence on the part of the Appellant No.1. He submitted that the findings recorded by the Tribunal are just and proper and the compensation awarded is reasonable. He therefore submitted that the Appeal may be dismissed.

10. The main question to be considered in this Appeal is whether the accident occurred due to negligence on the part of the Appellant No.1 who was driving the truck. If the answer to the said question is against the Appellant No.1, the other question will be as regards quantum of compensation.

11. In so far as the first question is concerned, the case of the Respondent in the claim Application is very specific that the Appellant No.1 who was driving the truck was trying to overtake one bullock cart which was ahead of the truck and while doing so he lost control due to excessive speed and dashed against the ambassador car. The case of the Respondent is that with a view to avoid the accident, the driver of the ambassador car turned his vehicle towards right as a result of which the impact was on the left side of the

car. As against this, a specific case of the Appellants in the written statement is that it was the Ambassador car of the Respondent which was overtaking one bullock cart in rash and negligent manner and in excessive speed. Shri Hardikar, Joint Director of Town Planning of the Respondent-State Government who was travelling in the Ambassador car stepped into the witness box. He was sitting in the Ambassador car behind the driver. He stated that the truck driven by the Appellant No.1 coming from opposite side was trying to overtake the bullock cart. He stated that the driver of the ambassador car noticed the truck and bullock cart, he tried to turn the car towards right side with a view to avoid head-on collision with the bullock cart or the truck. He stated in his examination in chief as under :

> . "...On noticing the incoming truck and the bullock cart going ahead of the truck, the driver of my car of noticing the same, tried to take our car to the right side in order to avoid the head-on collision either with bullock cart or the truck. But at the same moment, the truck had already overtaken the bullock cart and also turned to his left and therefore, in such way, our car and the incoming truck collided with each other..."

12. Thus, it is very clear from his evidence that when the impact took place the alleged act of overtaking by the truck of bullock cart was complete and the truck had also taken turn towards its left. This leaves no doubt that it is the ambassador car which went on its right side which is the wrong side of the road for the said car. In the cross

examination the said witness Shri Hardikar denied the suggestion that the car was driven in a very excessive speed and it went to wrong side of the road and gave dash to incoming truck. There is no other witness examined by the Respondent on the issue of negligence.

13. The Appellant no.1 who was the driver of the truck stepped into the witness box. He stated that the offending car came from opposite side in a zigzag manner. He stated that the car came on its wrong side and dashed against the cleaner side of the truck. He denied that he was overtaking any other vehicle. In the cross examination no suggestion is given to the Appellant No.1 that the truck was on its wrong side of the road.

14. The learned Counsel for the Respondent-State Government made an attempt to rely upon the statement recorded by the police of the Appellant No.1. However, I find that the Appellant No.1 was not confronted with the said statement in his cross examination. Though strict rules of evidence are not applicable to the tribunal under the said Act of 1988, the principles of natural justice are applicable to the proceedings before the Tribunal. It was necessary for the Respondent to confront the Appellant No.1 with his alleged admission in the police statement so that the Appellant No.1 had opportunity to explain the alleged admission made by him in the police report. The learned Counsel for the Appellants

relied upon the Judgment and Order dated 25th October 1981 delivered by the learned Judicial Magistrate (F.C.), Vadgaon-Mawal, Pune in Criminal Case No.2429 of 1986 by which the Appellant No.1 also was prosecuted for the offence punishable under sections 279, 337,338 of Indian Penal Code was acquitted. However, the acquittal in the Criminal Case may not be conclusive so far as the decision on issue of negligence by the Tribunal is concerned.

15. If the witness examined by the Respondent Shri Hardikar is read, it is very clear that even according to him by the time the truck reached the actual spot of impact, the act of overtaking the bullock cart was complete and infact the truck had already turned to its left. He also admitted that the driver of the Ambassador car has taken his car on his right side. Thus, the witness Shri Hardikar stated that after completing the act of overtaking, the truck had taken a turn towards left side and the Ambassador car was taken toward its right. It is an admitted position that the impact of the accident was on the left hand side i.e. cleaner side of the truck and front left hand side of the car. From the admitted position as reflected from the deposition of Shri Hardikar, it is very clear that it is the driver of the ambassador car who took his car on the extremely wrong side to the extent that the point of impact was virtually on the extreme right edge of the road from the side of the Ambassador car. The sketch produced by the learned A.G.P. in this Appeal shows

that the incident took place when the car was on its extreme wrong side.

16. Assuming that the driver of ambassador car turned his car towards right with a view to avoid accident, it is very difficult to understand why turn in right direction was taken. As the witness Shri Hardikar has admitted that the act of overtaking of bullock cart was complete and the truck had taken a turn towards its left. It is not the case of the Respondent that there was no space available on the left hand side of the Ambassador car or that there was no kachha road available on the left hand side. The sketch produced by the Respondent in Appeal shows that there was lot of space available on the left side of the Ambassodor car. Thus, the position which emerges from the evidence of Shri Hardikar that it was the Ambassador car which went on its extreme wrong side at the time of accident and the truck was on its proper side. Considering these facts and one more important aspect that the point of impact was on left hand side of both the vehicles, it is impossible to believe that the accident took place due to negligence on the part of the Appellant No.1. There is hardly any explanation as to why the driver of the Ambassador car took the vehicle to its extreme right side. It may be due to error of judgment on his part or due to negligence on his part. However, it is impossible to come to the conclusion that there was any negligence on the part of the Appellant No.1 who was driving the truck. The learned

Member of the Tribunal has relied upon the police statement of Appellant No.1 in which the Appellant No.1 purportedly stated that he overtook the bullock cart. As stated earlier the Appellant No.1 was not confronted in the evidence with the said statement. The Tribunal has not considered the very one important aspect that the spot of the accident was on the extreme right hand side of the ambassador car and that it is the ambassador car which was found on its wrong side and dash given by the ambassador car was on the cleaner side of the truck. By ignoring the evidence of Shri Hardikar to the effect that after overtaking the bullock cart the truck had taken a turn towards its left side and car was on its right hand side, the learned Member of the Tribunal recorded the following finding :

> . "...Therefore, considering all the facts and circumstances I am of the view that the car driver had taken all reasonable care at the moment but could not avoid the impact, since the truck driver suddenly overtook the bullock cart and came ahead in the same motion and dashed against the car in a speed which he could not control even after the application of brakes which appears from the panchnama of the place of accident, and, therefore, I hold that it is the opponent No.1 who has to be blamed for the said accident and not for the car driver. It was the opponent No.1 who drove his vehicle in rash and negligent manner unmindfully..."

17. It is obvious that the finding recorded by the Tribunal is totally contrary to the evidence led by the Respondent. Hence, the finding recorded by the Tribunal on the Issue of

negligence will have to be set aside.

18. Unless the Respondent establishes that the accident took place due to negligence on the part of the Appellant No.1, the compensation cannot be awarded to the Respondent. As the Respondent miserably failed to prove the negligence on the part of the Appellant No.1, the Respondent was not entitled to any compensation on account of damage to the Ambassador car. In the circumstances, the Appeal deserves to be allowed.

19. Hence, I pass the following order :

. Appeal is allowed with no order as to costs. The impugned Judgment and Award is quashed and set aside and Claim Application No.376 of 1986 stands dismissed.

Judge.

. After pronouncement of the Judgment Shri Dhanuka states that on the basis of impugned Judgment and Award some amounts have been deposited in this Court as well as with the tribunal. If that is so, the Appellants may be permitted to withdraw the said amount.

Judge.